

FEBRUARY 13, 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

08 C 925

**LABORERS' PENSION FUND and)
LABORERS' WELFARE FUND OF THE)
HEALTH AND WELFARE DEPARTMENT)
OF THE CONSTRUCTION AND GENERAL)
LABORERS' DISTRICT COUNCIL OF)
CHICAGO AND VICINITY, and JAMES S.)
JORGENSEN, Administrator of the Funds,)**

Plaintiffs,

v.

**NEW VIEW INSTALLATIONS, INC., an)
involuntarily dissolved Illinois corporation, and)
KATHLEEN M. BALLATIN, individually and)
d/b/a NEW VIEW INSTALLATIONS, INC.,)
and EDWARD P. BALLATIN, individually and)
d/b/a NEW VIEW INSTALLATIONS, INC.,)**

Defendants.

Case No.

Judge

**JUDGE ANDERSEN
MAGISTRATE JUDGE DENLOW**

COMPLAINT

Plaintiffs, Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (collectively the "Funds") and James S. Jorgensen ("Jorgensen"), Administrator of the Funds, by their attorneys Patrick T. Wallace, Jerrod Olszewski, Christina Krivanek, Amy N. Carollo and Charles Ingrassia for their Complaint against Defendants New View Installations, Inc., an involuntarily dissolved Illinois corporation, Kathleen M Ballatin, individually and d/b/a New View Installations, Inc., and Edward P. Ballatin, individually and d/b/a New View Installations, Inc., state:

COUNT I

(Failure To Submit Reports and Pay Employee Benefit Contributions):

1. Jurisdiction is based on Sections 502(e)(1) and (2) and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132 (e)(1) and (2) and 1145, Section 301(a) of the Labor Management Relations Act ("LMRA") of 1947 as amended, 29 U.S.C. §185(a), 28 U.S.C. §1331, 28 U.S.C. § 1367, and federal common law.

2. Venue is proper pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2), and 28 U.S.C. §1391 (a) and (b).

3. The Funds are multiemployer benefit plans within the meanings of Sections 3(3) and 3(37) of ERISA. 29 U.S.C. §1002(3) and 37(A). They are established and maintained pursuant to their respective Agreements and Declarations of Trust in accordance with Section 302(c)(5) of the LMRA. 29 U.S.C. § 186(c)(5). The Funds have offices and conduct business within this District.

4. Plaintiff Jorgensen is the Administrator of the Funds, and has been duly authorized by the Funds' Trustees to act on behalf of the Funds in the collection of employer contributions owed to the Funds and to the Construction and General District Council of Chicago and Vicinity Training Fund, and with respect to the collection by the Funds of amounts which have been or are required to be withheld from the wages of employees in payment of Union dues for transmittal to the Construction and General Laborers' District Council of Chicago and Vicinity (the "Union"). With respect to such matters, Jorgensen is a fiduciary of the Funds within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A).

5. Defendant New View Installations, Inc., (hereinafter “New View” or the “Company”) is an involuntarily dissolved Illinois corporation. The Company was involuntarily dissolved on September 14, 2007. At all times relevant herein, New View did business within this District and was at all times relevant herein an employer within the meaning of Section 3(5) of ERISA, 29 U.S.C. §1002(5), and Section 301(a) of the LMRA, 29 U.S.C. §185(c).

6. Defendant Kathleen M. Ballatin is the President of New View and Edward P. Ballatin is the Treasurer of New View (hereinafter collectively the “Ballatin’s”). The Ballatin’s were the President and Treasurer, respectively, of New View at the time of involuntary dissolution and prior to the involuntary dissolution, and are joint and severally liable for all debts and liabilities of New View to the Funds incurred in carrying on New View’s business after the involuntary dissolution. 805 ILCS 5/1 et seq.

7. The Union is a labor organization within the meaning of 29 U.S.C. §185(a). The Union and New View are parties to a collective bargaining agreement which became effective June 1, 2006 (“Agreement”). (A copy of the “short form” Agreement entered into between the Union and New View which Agreement adopts and incorporates Master Agreements between the Union and various employer associations, and also binds New View to the Funds’ respective Agreements and Declarations of Trust, is attached hereto as **Exhibit A.**)

8. The Funds have been duly authorized by the Construction and General Laborers’ District Council of Chicago and Vicinity Training Fund (the “Training Fund”), the Midwest Construction Industry Advancement Fund (“MCI AF”), the Chicagoland Construction Safety Council (the “Safety Fund”), the Laborers’ Employers’ Cooperation

and Education Trust (“LECET”), the Builders’ Association (“BAC”), the CDCNI/CAWCC Contractors’ Industry Advancement Fund (the “Wall & Ceiling Fund”), the CISCO Uniform Drug/Alcohol Abuse Program (“CISCO”), the Laborers’ District Council Labor Management Committee Cooperative (“LDCLMCC”), the CARCO Industry Advancement Fund (“CARCO”), the Chicago Area Independent Contractors Association (“CAICA”), and the Illinois Small Pavers’ Association (“ISPA”) to act as an agent in the collection of contributions due to those Funds.

9. The Agreement and the Funds’ respective Agreements and Declarations of Trust obligate New View to make contributions on behalf of its employees covered by the Agreement for pension benefits, health and welfare benefits, and/or benefits for the training fund and to submit monthly remittance reports in which the Company, *inter alia*, identifies the employees covered under the Agreement and the amount of contributions to be remitted to the Funds on behalf of each covered employee. Pursuant to the terms of the Agreement and the Funds’ respective Agreements and Declarations of Trust, contributions which are not submitted in a timely fashion are assessed up to 20 percent liquidated damages plus interest.

10. The Agreement and the Funds’ respective Agreements and Declarations of Trust require New View to submit its books and records to the Funds on demand for an audit to determine benefit contribution compliance.

11. The Agreement requires New View to obtain and maintain a surety bond to guaranty the payment of future wages, pension and welfare benefits.

12. Notwithstanding the obligations imposed by the Agreement and the Funds’ respective Agreements and Declarations of Trust, New View has:

(a) failed to submit benefit reports and contributions to the Welfare Fund for the period of November 2007 forward, thereby depriving the Fund of information and income necessary to administer the Fund;

(b) failed to submit benefit reports and contributions to the Pension Fund for the period of November 2007 forward, thereby depriving the Fund of information and income necessary to administer the Fund;

(c) failed to submit benefit reports and contributions to the Training Fund for the period of November 2007 forward, thereby depriving the Fund of information and income necessary to administer the Fund;

(d) failed to submit benefit reports and contributions to the one or more of the related funds set forth above in paragraph 8 for the period of November 2007 forward, thereby depriving those funds of information and income necessary to administer the funds; and

(e) failed to obtain and maintain a surety bond.

13. New View also failed to timely pay benefit contributions for the month of April 2005. As a result, New View owes \$96.03 in associated liquidated damages.

14. New View's failure to submit and/or timely pay contributions violates Section 515 of ERISA, 29 U.S.C. §1145, and Section 301 of the LMRA. 29 U.S.C. §185.

15. Pursuant to Section 502(g)(2) of ERISA, 29 U.S.C. §1132 (g)(2), Section 301 of the LMRA, 29 U.S.C. §185, 805 ILCS 5/1 et. seq., and the terms of the Agreement and the Funds' respective Trust Agreements, New View and the Ballatin's are liable to the Funds for unpaid contributions, as well as interest and liquidated damages on

the unpaid contributions, accumulated liquidated damages, reasonable attorneys' fees and costs, and such other legal and equitable relief as the Court deems appropriate.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against Defendants New View Installations, Inc., Kathleen M. Ballatin, individually and d/b/a New View Installations, Inc., and Edward P. Ballatin, individually and d/b/a New View Installations, Inc:

- a. ordering New View and the Ballatin's to submit their books and records to an audit for the period of January 1, 2005 forward;
- b. ordering New View and the Ballatin's to submit benefit reports and contributions for the period of November 2007 forward;
- c. entering judgment in sum certain against New View and the Ballatin's on the amounts due and owing pursuant to the reports to be submitted and the audit, if any, including contributions, interest, liquidated damages, accumulated liquidated damages and interest on late reports, audit costs, and attorneys' fees and costs;
- d. ordering New View and the Ballatin's to obtain and maintain a bond;
- e. entering judgment in sum certain against New View in the amount of \$96.03 for liquidated damages as a result of untimely submitted benefit contributions for the period of April 2005; and
- f. awarding Plaintiffs any further legal and equitable relief as the Court deems appropriate.

COUNT II

(Failure to Pay Union Dues and Liquidated Damages)

15. Plaintiffs reallege paragraphs 1 through 15 of Count I.

16. Pursuant to agreement, the Funds have been duly designated to serve as collection agents for the Union in that the Funds have been given the authority to collect from employers union dues which have been or should have been deducted from the wages of covered employees.

17. Notwithstanding the obligations imposed by the Agreement, New View has failed to submit reports and union dues that were or should have been withheld from the wages of its employees performing covered work for the periods of November 2007 forward, thereby depriving the Union of income and information necessary to determine dues submission compliance.

18. Pursuant to the terms of the Agreement, dues which are not submitted in a timely fashion are assessed 10 percent liquidated damages.

19. Pursuant to the Agreement and 805 ILCS 5/1 et seq., New View and the Ballatin's are liable to the Funds for the unpaid union dues, liquidated damages, reasonable attorneys' fees and costs as the Union's collection agent, and such other legal and equitable relief as the Court deems appropriate.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants New View Installations, Inc., Kathleen M. Ballatin, individually and d/b/a New View Installations, Inc., and Edward P. Ballatin, individually and d/b/a New View Installations, Inc., ordering them to submit current dues reports and dues, submit their books and records to the Funds for an audit for the period of January 1, 2005 forward, ordering them to pay any union dues revealed as due and owing on the delinquent reports and audit together with all late fees, attorneys' fees and costs, and any other legal and equitable relief as the Court deems appropriate.

February 13, 2008

Respectfully submitted,

Laborers' Pension Fund, et al.

By: 
Charles Ingrassia

Patrick T. Wallace
Jerrod Olszewski
Christina Krivanek
Amy N. Carollo
Charles Ingrassia
Laborers' Pension and Welfare Funds
Sub Office, 53 W. Jackson Blvd., Suite 550
Chicago, IL 60604
(312) 692-1540



Construction & General Laborers' District Council of Chicago and Vicinity

Affiliated with the Laborers International Union of North America, A.F. of L. - C.I.O. -
6121 WEST DIVERSEY AVENUE - CHICAGO, ILLINOIS 60639 - PHONE: 773-237-7637 - FAX: 773-237-3417

LOCALS 1, 2, 4, 5, 6, 25, 75, 76, 96, 118, 149, 152, 225, 269, 288, 582, 681, 1001, 1008, 1035, 1082

INDEPENDENT CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING AGREEMENT

It is hereby stipulated and agreed by and between New View Installations, Inc. hereinafter called the "EMPLOYER", and the CONSTRUCTION AND GENERAL LABORERS' DISTRICT COUNCIL OF CHICAGO AND VICINITY, hereinafter called the "UNION", representing and encompassing Local Nos. 1, 2, 4, 5, 6, 25, 75, 76, 96, 118, 149, 152, 225, 269, 288, 582, 681, 1001, 1008, 1035, 1082 and encompassing the geographical area of the counties of Cook, Lake, DuPage, Will, Grundy, Kendall, Kane, McHenry and Boone, in the State of Illinois, together with any other locals which may come within the jurisdiction of the UNION, that:

1. The EMPLOYER, in response to the UNION's claim that it represents an uncoerced majority of each EMPLOYER's laborer employees, acknowledges and agrees that there is no good faith doubt that the UNION has been authorized to and in fact does represent such majority of laborer employees. Therefore, the UNION is hereby recognized as the sole and exclusive collective bargaining representative for the employees now or hereafter employed in the bargaining unit with respect to wages, hours of work and other terms and conditions of employment in accordance with Section 9 of the National Labor Relations Act without the need for a Board certified election.

2. The EMPLOYER affirms and adopts the Collective Bargaining Agreements between the UNION and the Builders Association of Chicago and Vicinity, the Illinois Road Builders Association, the Underground Contractors Association, the Mason Contractors Association of Greater Chicago, the Concrete Contractors Association of Greater Chicago, B.D.C.N./C.A.W.C.A., the Linn County Contractors Association, the Contractors Association of Will and Grundy Counties, the Fox Valley General Contractors Association, the Chicago Demolition Contractors Association, the Illinois Environmental Contractors Association, and all other Associations with whom the District Council or any of its affiliated local unions has a duly negotiated agreement, and re-establishes all agreements from June 1, 1976 together with all amendments thereto. Where no current Association agreement is negotiated, the terms of the most recent expired agreement are incorporated herein with all terms, conditions and dates extended for the duration hereof, until a current agreement exists that shall be incorporated retroactively herein. It is further agreed that where a contractor works in the jurisdiction of any local UNION, then the Association agreement covering the local UNION is herein specifically incorporated in this agreement and shall supersede the standard District Council agreements in the case of any conflict between the District Council agreement and the local Association agreement. Nothing herein shall limit the jurisdiction of this Agreement to less than that provided in this Agreement.

3. The EMPLOYER agrees to pay the amounts that it is bound to pay under said Collective Bargaining Agreements to the HEALTH AND WELFARE DEPARTMENT OF THE CONSTRUCTION AND GENERAL LABORERS' DISTRICT COUNCIL OF CHICAGO AND VICINITY, the LABORERS' PENSION FUND, the CONSTRUCTION AND GENERAL LABORERS' DISTRICT COUNCIL OF CHICAGO AND VICINITY TRAINING TRUST FUND, the CHICAGO AREA LABORERS-EMPLOYERS COOPERATION EDUCATION TRUST ("LECET"), and to all other designated Union-affiliated benefit funds, and to become bound by and to become a party to the Agreements and Declarations of Trust creating said Trust Funds as if it had signed the original copies of the Trust Instruments and amendments thereto. The EMPLOYER ratifies and condones the appointment of the EMPLOYER Trustees who shall, together with their successor Trustees, designated in the manner provided in said Agreements and Declaration of Trusts and jointly with an equal number of Trustees appointed by the UNION, carry out the terms and conditions of the Trust Instruments.

The EMPLOYER further affirms and re-establishes that all prior contributions paid to the Welfare, Pension, Training and LECET Funds were made by duly authorized agents of the EMPLOYER at all proper rates, for the appropriate periods of time, and that by making said prior contributions the EMPLOYER evidences the intent to be bound by the terms of the Trust Agreements and Collective Bargaining Agreements which were operative at the time the contributions were made, acknowledging the report form to be a sufficient instrument in writing to bind the EMPLOYER to the applicable agreements.

4. Employees covered by this Working Agreement shall retain all the work traditionally performed by members of the UNION. The EMPLOYER agrees that it will not cause any such traditionally performed work to be done at a construction site by employees other than those covered by this Memorandum of Agreement, except with the prior written consent of the UNION. Any EMPLOYER, whether acting as a contractor, general manager or developer, who contracts out or sublets any of the work coming within the jurisdiction of the UNION, shall assume the obligations of any such subcontractor for prompt payment of employees' wages and other benefits, including reasonable attorneys' fees incurred in enforcing the provisions hereof. Notwithstanding any agreement to the contrary, the EMPLOYER'S violation of any provision of this paragraph will give the UNION the right to take any other lawful action, including all remedies at law or equity.

5. In the event of any change in the ownership, management or operation of the EMPLOYER'S business by sale or otherwise, it is agreed that as a condition of such transfer or change that the new owner and management shall be fully bound by the terms and conditions of this Agreement. This Agreement is applicable to all successors and transferees of the EMPLOYER, whether corporate or otherwise. The EMPLOYER shall provide ten (10) days prior notice to the Union of the sale or transfer.

6. The negotiated wage and fringe benefit contribution rates in the various Collective Bargaining Agreements are as follows:

June 1, 1998	\$23.35 Per Hour Wages
to	\$ 2.27 Per Hour Health and Welfare Fund
to	\$ 2.05 Per Hour Pension Fund
May 31, 1999	\$.18 Per Hour Training Fund (plus additional amounts in Association agreement)
	\$.02 Per Hour MCIAF (if applicable in Association agreement)
	\$.02 Per Hour LECET (to be deducted from MCIAF if LECET contribution is not provided in Association agreement)
	\$.01 Per Hour Chicagoand Safety Council (if applicable)
	In addition, the Employer shall pay other amounts if provided in appropriate Association agreements for industry funds.
June 1, 1999	\$ 1.26 Per Hour increase for the year June 1, 1998 through May 31, 2000 to be allocated between wages and fringe benefits by the Union in its sole discretion.
to	Welfare, Pension, Training and LECET Funds contributions to remain the same unless additional sums are allocated.
May 31, 2000	
June 1, 2000	\$ 1.35 Per Hour increase for the year June 1, 2000 through May 31, 2001, to be allocated between wages and fringe benefits by the Union in its sole discretion.
to	Welfare, Pension, Training and LECET Funds contributions remain the same unless additional sums are allocated.
May 31, 2001	

All additional wage rates, dues checkoff, and fringe benefits that are negotiated or become effective after May 31, 2001, shall be incorporated in this Memorandum of Agreement.

7. Effective June 1, 1998, all EMPLOYERS covered by this Memorandum of Agreement incorporating the various Collective Bargaining Agreements shall deduct from the wages of employees covered by the said contract, uniform working dues in the amount of 1.5% of gross wages, or as determined by the UNION, and shall remit monthly to the UNION office designated to the EMPLOYER by the District Council the sums so deducted, together with an accurate list of employees from whom wages and dues were deducted and the amounts applicable to each employee, not later than the 15th day of the month following the month for which said deductions were made.

8. It is the intention of the parties that such deductions shall comply with the requirements of Section 302(c)(4) of the Labor Management Relations Act of 1947, as amended and such deductions be made only pursuant to written agreements from each employee on whose account such deductions are made, which agreement shall not be irrevocable for a period of more than one year or beyond the termination date of the Memorandum of Agreement, whichever occurs sooner.

9. This Agreement shall remain in full force and effect through May 31, 2001 (unless an applicable Association agreement is of longer duration) and shall continue thereafter unless there has been given written notice, by registered or certified mail by either party (60) nor more than ninety (90) days prior to the expiration date, of the desire to modify or amend this Agreement through negotiations. In the absence of such notice the EMPLOYER and the UNION agree to be bound by the new area-wide negotiated contracts with the various Associations incorporating them into this Agreement and extending this Agreement for the life of the newly negotiated contracts.

10. The EMPLOYER acknowledges and accepts the facsimile signatures on this contract as if they were the original signatures. The EMPLOYER further acknowledges receipt of a copy of the complete Joint Working Agreement. Upon request of the UNION, the EMPLOYER shall execute another agreement that reflects the final contract settlements incorporated herein.

Dated October 12 1999
month / day year

ACCEPTED:

Laborer's Local Union No. 752

By: John A. Smith

CONSTRUCTION AND GENERAL LABORERS'
DISTRICT COUNCIL OF CHICAGO AND VICINITY

By: Robert E. Bloch
Robert E. Bloch, Trustee

For Office Use Only: BAC

New View Installations, Inc.
(Employer)

By: Edward P. Ballatin TREASURER
(Print Name and Title)

Edward P. Ballatin
(Signature)

7134 N. MELVINA
(Address)

CHICAGO IL 60646
(City, State and Zip Code)

773-763-0838
(Telephone)

TRUST FUND

EXHIBIT

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